

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

ANDREW S. TARKOWSKI

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner, Social Security
Administration,

Defendant.

Case No. 12-CV-57-FHM

OPINION AND ORDER

Counsel's Motion for Attorney Fees Pursuant to 42 U.S.C. § 406(b), [Dkt. 26], is before the court for decision. The time for filing a response has passed and the Commissioner has not filed a response brief.

Counsel seeks approval of an attorney fee award of \$ 4,182 pursuant to the terms of 42 U.S.C. § 406(b) and the contingency fee contract between Plaintiff and counsel. Counsel has certified that Plaintiff has been advised of the fee request, and Plaintiff has expressed he does not object to the requested fee award. [Dkt. 27].

Plaintiff appealed the Administrative denial of her application for Social Security benefits to this Court. The Court reversed the administrative denial of Plaintiff's application for benefits and remanded the case to the Commissioner for further proceedings. The Court granted Plaintiff's application for an award of fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, for the work counsel performed before the Court. However, counsel represents that the EAJA fee award was seized for payment of Plaintiff's debt.

On remand the Commissioner determined that Plaintiff was entitled to disability benefits, including an award of past due benefits. The letter from the Social Security Administration that was provided with the motion for fees reflects that not more than 25%

of the past due benefits of \$40,728 was being withheld for the payment of attorney fees. [Dkt. 26-1, pp. 3-4].

Section 406(b)(1) allows an award of attorney fees, payable from the past due benefits withheld by the Social Security Administration, when the district court has remanded a Title II Social Security case for further proceedings and benefits are awarded on remand. *McGraw v. Barnhart*, 450 F.3d 493 (10th Cir. 2006). 42 U.S.C. § 406(b)(1)(A) provides that a court may award “a reasonable fee . . . not in excess of 25 percent of the . . . past due benefits” awarded to the claimant. The fee is payable “out of, and not in addition to, the amount of the [the] past-due benefits.” Plaintiff and counsel entered into a contract, [Dkt. 1-2], which is a contingency fee arrangement that provides that the attorney fee will be 25% of past due benefits.

The undersigned concludes that the requested fee award of \$4,182 which is 10% of Plaintiff's past due benefit award as reflected in the record submitted is reasonable. That award comports with the contract between counsel and Plaintiff and is within the statutory limits of §406(b). The fee yields an hourly rate of approximately \$166 per hour for hours of work performed before the district court, which does not amount to a windfall.

Plaintiff's Attorney's Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b), [Dkt.] is GRANTED. Counsel is awarded \$4,182 to be paid from Plaintiff's past due benefits being withheld by the Commissioner for attorney fees.

SO ORDERED this 25th day of August, 2014.



FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE